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Prepared Statement of Ranking Member Grassley of Iowa  
U.S. Senate Committee on the Judiciary  
FBI Oversight Hearing  
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Chairman Leahy, thank you for calling this oversight hearing today. It has been five months since Congress passed and President Obama signed into law an unprecedented two-year extension of Director Mueller's term as Director of the Federal Bureau of Investigation (FBI). Given the historical problems with the FBI amassing too much power, the President's request to extend Director Mueller's term for an additional two-years, breaking from over thirty-five years of practice limiting the Director to a ten-year term, was not a decision I took lightly. Ultimately, given the President's failure to nominate a replacement in a timely and responsible manner, I reluctantly agreed to the request provided we built a historic record that modifying the Directors term was a one-time event.

I'm pleased that Chairman Leahy and members of the Committee agreed with me and moved the extension through regular order including a hearing on the legislation, an executive mark-up of the legislation, floor consideration of the legislation, a new nomination from the President, along with a final confirmation vote. This process sets the historical record that extending Director Mueller's term was not a fly-by-night decision. It also puts the President on notice to begin the process of selecting and nominating a new FBI Director earlier than the last attempt. Another extension will not occur. So, it would be irresponsible not to begin planning sooner rather than later for Director Mueller's inevitable exit.

That said, I want to welcome Director Mueller here today. Director Mueller's tenure as FBI Director has been a good one and his dedication and reputation were significant factors in his 100-0 confirmation vote this past July. I'm sure when his two-year extension runs out he'll be ready for some much needed downtime and will look forward to transitioning the office to his successor.

With regard to policy matters, there are a number of topics I intend to discuss with the Director. First, I want to discuss a perpetual problem at the FBI, whistleblower protection. I have raised this issue with the Director repeatedly during his tenure, but it continues to plague the FBI. Director Mueller has repeatedly assured me that he will not tolerate retaliation of any whistleblowing at the FBI. Despite these assurances, two particular whistleblower cases have been dragging on for years. These cases are largely fueled by the FBI's desire to continually appeal rulings and findings of wrongdoing by FBI supervisors.

For example, FBI Agent Jane Turner filed a whistleblower complaint in 2002 when she discovered that FBI agents were removing items from Ground Zero following 9/11. The agents were collecting items from the 9/11 crime scene as personal memorabilia. She faced retaliation for raising concerns about these agents and her case has been stuck in administrative limbo at the Justice Department for over nine years. This is despite the fact she won a jury trial in Federal District Court where the FBI was ordered to pay nearly half a million dollars in damages, in addition to a Justice Department administrative ruling substantiating her claims of retaliation. Even though she has won twice, the FBI recently appealed the case to the Deputy Attorney General who remanded it for further proceedings. Nine years is far too long for any case to be resolved—especially a whistleblower case.

In another case, that of Robert Kobus, a 30-year non-agent employee of the FBI who disclosed time and attendance fraud, the case has languished for over 5 years. This case is similar in that the Inspector General issued a 70 page investigative report detailing the retaliation that Mr. Kobus faced—including being reassigned to a vacant floor at a New York FBI Field Office. Again, the FBI has continued to appeal this case despite clear findings of retaliation.

I wrote to Attorney General Holder last month about these cases pointing out statements made by the Attorney General and Deputy Attorney General to support whistleblowers. Those statements are similar to assurances given by Director Mueller. But, like nearly all my inquiries on these cases, the Attorney General's response from his Assistant Attorney General for Legislative Affairs simply provided me a recitation of the appeals process for FBI whistleblowers. Actions speak louder than words. And if the Attorney General, Deputy Attorney General, and FBI Director truly wish to help whistleblowers, they have the power to end the years of appeals and accept the findings issued by the Inspector General and Office of Attorney Recruitment and Management. I intend to ask the Director why he continues to allow the FBI to file appeal after appeal despite clear findings of retaliation. He has the power to end this cycle and show whistleblowers that the FBI and Department of Justice take their complaints seriously.

#### Anthrax Investigation (Amerithrax):

I also want to discuss some issues that have recently arisen as follow-up to the FBI's closing of the Amerithrax investigation. Specifically, the Justice Department recently settled a wrongful death lawsuit in Florida for \$2.5 million. That suit was filed by the family of an editor who died as a result of the 2001 anthrax attacks. The lawsuit raised questions in the press given potentially conflicting statements made by the Justice Department that seemed to cast doubt on Dr. Ivins' ability to actually manufacture the Anthrax. Additionally, in subsequent depositions of Dr. Ivins' coworkers, statements were made calling into question Dr. Ivins' ability to produce the anthrax used in the attacks given his lack of access to necessary equipment. Ultimately, the Department filed a supplemental filing correcting statements that seemed to cast doubt upon the FBI's case, but did not seek to refute the depositions of Dr. Ivins' coworkers.

I wrote to the Attorney General and the FBI Director in August asking how the Department's filing and the depositions could be squared against the FBI's contention that Dr. Ivins was the sole assailant. In the response, the Justice Department argued that the "issue raised by the United

States in its motion did not pertain to whether Dr. Ivins was responsible for the anthrax attacks or whether he could have created the anthrax powder in his laboratory.” The Department instead argued, “The issue raised by our motion is whether the Army failed to properly oversee and supervise operations at the United States Army Medical Institute for Infectious Disease (USAMRIID) such that the agency was negligent in failing to anticipate and prevent the theft of liquid anthrax and its conversion into powder for use in the attacks.” With regard to the depositions, the Department argued, “doubts of [Dr. Ivins’] colleagues only underscore [DOJ’s] view that Dr. Ivins’ actions were not foreseeable under Florida tort law.” While these statements attempt to thread the needle about the Government’s liability, the fact remains that the Government ended up paying \$2.5 million to settle the case and cast a further cloud on the FBI’s case that Dr. Ivins’ was the sole perpetrator.

#### Access to Line Agents and Attorneys:

The Anthrax investigation and the Department’s response to it have also raised additional questions. Notably, in responding to press accounts questioning the Government’s case against Dr. Ivins, the FBI and Department both allowed line agents and attorneys to be interviewed on national television. In allowing these FBI agents and Assistant U.S. Attorney’s to conduct detailed interviews with the press, the FBI and Department have provided greater access to the press than they have Congress. Both the Department and FBI routinely argue that line agents and attorneys are prohibited from talking to members of Congress. Yet, you can turn on a television and see in-depth interviews with these same agents and attorneys that members of Congress would like to interview. This has been a very important part of my investigation of the Department’s failed handling of the ATF’s Operation Fast & Furious. I want to know from Director Mueller why he allows line agents to provide detailed interviews to the press on national television, but repeatedly refuses to let Congress and their staff interview line agents and attorneys.

#### Anthrax Investigation Leaks:

The Anthrax investigation also spurned an unfortunate situation where someone in the Justice Department leaked sensitive information regarding the investigation to the press. Those leaks involved alerting the media that Dr. Steven Hatfill was under investigation and that search warrants were going to be executed on his residence. Ultimately, Dr. Hatfill was exonerated of any wrongdoing in the case, and the Department of Justice settled a civil lawsuit filed by Dr. Hatfill based upon the Department’s violation of the Privacy Act. This settlement cost the American taxpayers nearly \$6 million and occurred based upon the Department’s leak of information to the press. I have repeatedly asked for a status update on the investigation into the leak to determine who the source was.

In response to my August 31, 2011, letter, the Department stated, “After an extensive investigation, career prosecutors concluded that, based upon the Principles of Federal Prosecution, criminal charges were not appropriate in this matter.” This is a stunning development and only adds to concerns I have that leakers at the Justice Department are held to a different standard than Federal employees outside the Department. Now that it appears that the investigation is over, I want to know from Director Mueller who the leakers were and whether

they faced any administrative sanctions for the leaks. The actions of these individuals put federal taxpayers on the hook for a \$6 million settlement; they need to be held accountable.

Another area of concern is the FBI's relationship with informants. The Bureau's actions regarding Whitey Bulger were a black eye for the FBI and recent press reports from Boston indicate that a similarly cozy relationship may have developed between alleged mobster Mark Rossetti and the Boston FBI. I wrote Director Mueller a letter on Mr. Rossetti on October 17th and I look forward to asking him more questions on this matter today.

I would also like to note, that today is the one-year anniversary of the tragic shooting of Border Patrol Agent Brian Terry. My investigation into the ATF's failed Operation Fast & Furious continues. I sent Director Mueller a letter dated October 20, 2011, asking some questions about the FBI's investigation of the murder of Agent Terry. I have not yet received a response to that letter, but I have talked with Director Mueller about the case. I want a commitment from Director Mueller that my letter will be answered in writing. The Terry Family deserves answers about Agent Terry's murder and answering my letter is another step toward getting those answers.

Time permitting, I'd also like to ask the Director about his involvement in the drafting of a memorandum that was reported in the press regarding the targeted killing of Anwar al-Awlaqi, the potential transfer of known enemy combatant Ali Mussa Daquduq from U.S. military custody to Iraq, FBI involvement in investigating mortgage fraud at Countrywide Financial, conflicts between the FBI and agents of the Department of Homeland Security Inspector General investigating corruption among DHS officers at the border, and about the recent Government Accountability Office report on the status of the FBI's headquarters in Washington, D.C.

There is a lot to cover so I look forward to Director Mueller's testimony and his responses to these important matters. Thank you.